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CHAIRMAN

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DEVIN NUNES, CALIFORNIA
RANKING MEMBER

SCOTT GLABE, MINORITY STAFF DIRECTOR

Permanent Select Committee on Intelligence
U.S. House of Representatives

March 14, 2019

VIA U.S. AND ELECTRONIC MAIL

Abbe D. Lowell, Esq.
Winston & Strawn LLP
1700 K Street, N.W.
Washington, D.C. 20006-3817
Email: [redacted]

Dear Mr. Lowell:

As part of its investigation of foreign influence in the U.S. political process during and since the 2016 U.S. election, the House Permanent Select Committee on Intelligence ("Committee") is investigating efforts to obstruct authorized investigations into these matters, including any attempt to impede, obstruct, and/or mislead the Committee.

The Committee therefore respectfully requests that you preserve and produce certain documents and material listed in the attached document request and participate in a voluntary, transcribed interview before the Committee. We appreciate your cooperation with the Committee and ask that you provide the requested materials no later than Friday, March 22, 2019.

Please contact Daniel Goldman with the Committee's Majority Staff at 202-225-7690 if you have any questions regarding your document production as well as potential dates for testimony before the Committee. Based on the Committee's investigation, the Committee does not believe that any privilege would preclude production of the requested documents. If you disagree, please contact the Committee immediately to discuss further.

Thank you for your prompt attention to this matter.

Sincerely,

Adam B. Schiff
Chairman

DOCUMENT REQUEST

The House Permanent Select Committee on Intelligence ("Committee") requests that you preserve and produce to the Committee all documents for the period of **January 1, 2017 to the present**, regardless of form and as defined below, relating to:

1. The written Statement of Michael D. Cohen, Esq. (the "Statement") submitted to the Committee on or about August 28, 2017 (attached), including but not limited to any drafts and redlines (*e.g.*, edited versions) of the Statement and any communications regarding the Statement or information contained therein, including but not limited to the Trump Organization's, Donald J. Trump's, Michael Cohen's, Felix Sater's, Donald Trump Jr.'s, or Ivanka Trump's roles or involvement in the Trump Tower Moscow project;

2. False statements made by Michael Cohen in relation to the Statement, to which Cohen pleaded guilty on November 29, 2018 in United States v. Michael Cohen, No. 18-cr-850 (SDNY), and that relate to the following:

    a. The timeframe during which Michael Cohen and the Trump Organization, including any of its employees, agents, or associates, engaged in business negotiations and activities related to the Trump Tower Moscow proposal, including but not limited to the date the Trump Organization and/or Michael Cohen abandoned the proposal;

    b. The number or extent of contacts or communications between Michael Cohen with Donald J. Trump; employees, agents, or associates of the Trump Organization; or members of the Trump family regarding the Trump Tower Moscow project;

    c. Travel to Russia in connection with the Trump Tower Moscow project by Michael Cohen or Donald J. Trump, including but not limited to whether Michael Cohen ever considered asking Donald J. Trump to travel to Russia in connection with the project; and

    d. Any response from or contact with Russian government officials, including but not limited to Dmitry Peskov, Sergei Ivanov, and their agents, associates, and representatives, regarding the Trump Tower Moscow project;

3. The Joint Defense Agreement ("JDA") involving Michael D. Cohen and others, including but not limited to any formal or informal written memorialization of the JDA and any drafts thereof, the terms of the JDA, and the identities of the parties to the JDA;

4. Identifying the location of potentially responsive materials in electronic or hardcopy form; methods or processes used to search for responsive materials, including but not limited to search terms, time delimitations, computer assistant review ("CAR"), or manual human review; and review of potentially responsive materials as well as decision-making as to

what materials to produce to or withhold from this Committee, other congressional committees, or any U.S. federal or state agency, in connection with any document request made by this Committee, other congressional committees, or any U.S. federal or state agency to the Trump Organization, Michael Cohen, Donald Trump Jr., Keith Schiller, Rhona Graff, and any other current or former employee, agent, or associate of the Trump Organization (including communications and memoranda, but not the actual document productions);

5. A presidential "pre-pardon," "global pardon," pardon, or other pardon-related concept for or related to Michael Cohen, Jared Kushner, Donald Trump Jr., Ivanka Trump, the Trump Organization, Paul Manafort, Michael Flynn, Roger Stone, Keith Schiller, Rhona Graff, Felix Sater, or any witness who testified before the Committee or who was asked to testify before the Committee;

6. The testimony of any witness who testified before the Committee or who was asked to testify before the Committee, including but not limited to their anticipated testimony;

7. The search warrants executed at Michael Cohen's residence, hotel room, office, safety deposit box, and electronic devices on April 9, 2018, and any criminal investigations related thereto;

8. Criminal charges brought against Michael Cohen, including but not limited to those filed in United States v. Michael Cohen, No. 18-cr-602 (SDNY) and United States v. Michael Cohen, No. 18-cr-850 (SDNY); and

9. The June 9, 2016 meeting at Trump Tower between Donald Trump Jr., Jared Kushner, Paul Manafort, Natalia Veselnitskaya, and others (the "Trump Tower meeting"), including but not limited to Donald J. Trump and Donald Trump Jr.'s public statements on and after July 8, 2017 regarding the Trump Tower meeting, any drafts and redlines (*e.g.*, edited versions) of such statements, and any communications regarding the statements or information contained therein.

Additionally, the Committee requests that you produce any and all documents supplied in response to any subpoena, search warrant, seizure warrant, summons, or other legal writ, notice, investigation or order or request for information, property, or material, made by Congress or any U.S. federal or state agency, including but not limited to, the office of the Special Counsel Robert Mueller III or the U.S. Attorney's Office for the Southern District of New York, that could lead to discovery of any facts within the publicly-announced parameters of the Committee's investigation (attached), or efforts to obstruct authorized investigations into these matters.

To expedite the Committee's review, responsive materials should be produced immediately upon being identified, rather than waiting to submit all documents at one time, and all material produced be bates-stamped and provided in a searchable, electronic format.

For purposes of this document request:

The documents requested include all those that are in your custody, control, or possession, or within your right of custody, control, or possession. If the document request cannot be complied with in full, it shall be complied with to the extent possible, with an explanation of why full compliance is not possible. Any document withheld on the basis of privilege shall be identified on a privilege log submitted with the responses to this document request. The log shall state the date of the document, its author, his or her occupation and employer, all recipients, the occupation and employer of each recipient, the subject matter, the privilege claimed and a brief explanation of the basis of the claim of privilege. If any document responsive to this document request was, but no longer is, in your possession, custody, or control, identify the document and explain the circumstances by which it ceased to be in your possession, custody, or control.

Definitions:

For purposes of this document request:

1. The term "Trump Organization" includes, but is not limited to the Trump Organization and each of its subsidiaries, affiliates, branches, divisions, partnerships, properties, groups, special purpose entities, joint ventures, predecessors, successors, or any other entity in which Donald Trump or his immediate family have or had a controlling interest, and any current or former employee, officer, director, shareholder, partner, member, consultant, senior manager, manager, senior associate, staff employee, independent contractor, agent, attorney or other representative of any of those entities.

2. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: agreements; papers; memoranda; correspondence; reports; studies; reviews; analyses; graphs; diagrams; photographs; charts; tabulations; presentations; working papers; records; records of interviews; desk files; notes; letters; notices; confirmations; telegrams; faxes, telexes, receipts; appraisals; interoffice and intra office communications; electronic mail (e-mail); electronic messages; text messages; instant messages; marketing materials; contracts; cables; recordings, notations or logs of any type of conversation, telephone call, meeting or other communication; bulletins; printed matter; computer printouts; teletype; invoices; transcripts; audio or video recordings; statistical or informational accumulations; data processing cards or worksheets; computer stored or generated documents; computer databases; computer disks and formats; machine readable electronic files; data or records maintained on a computer; diaries; questionnaires and responses; data sheets; summaries; minutes; bills; accounts; estimates; projections; comparisons; messages; electronically stored information; and similar or related materials. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

3. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face to face, in meetings, by telephone, mail, telex, facsimile, computer, discussions, releases, delivery, or otherwise.

4. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this document request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

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STATEMENT OF MICHAEL D. COHEN, ESQ.

Today, August 28, 2017, my legal counsel, Stephen M. Ryan of McDermott Will & Emery LLP, produced documents to the House Permanent Select Committee on Intelligence (the "Committee") on my behalf. Certain documents in the production reference a proposal for "Trump Tower Moscow," which contemplated a private real estate development in Russia. The proposal was similar to other ideas for real estate projects contemplated years before any campaign. I am writing to provide the Committee with additional information regarding the proposal.

As background, other U.S. hotel chains and brands had already opened in Moscow, including Hyatt Hotels Corporation, Marriott International, Inc., and the Ritz-Carlton Hotel Company. Similarly, the Trump Organization had foreign hotels, as well as golf and land projects, in Canada, India, Indonesia, Ireland, Panama, Philippines, Scotland, South Korea, Turkey, the UAE and Uruguay. During my ten years with the Trump Organization, the company received countless proposals for licensing deals and real estate ventures in locations across the globe.

In or around September 2015, I received a proposal for the construction of a luxury hotel, office, and residential condominium building in Moscow, Russia. I performed some initial due diligence to assess whether the "Trump Tower Moscow" proposal aligned with the Trump Organization's strategic business interests. Based on my preliminary assessment of the proposal, the licensee would be required to find and present an appropriate parcel of land that could be obtained and developed with all necessary government permits and permissions. In addition, the licensee would be responsible for all development costs and financing of the land and building. The Trump Organization would license the "Trump" brand name to a qualified Moscow-based real estate development company for the purpose of identifying, promoting, and marketing the building. The proposal was under consideration at the Trump Organization from September 2015 until the end of January 2016. By the end of January 2016, I determined that the proposal was not feasible for a variety of business reasons and should not be pursued further. Based on my business determinations, the Trump Organization abandoned the proposal.

I worked on the proposal within my capacity as Executive Vice President and Special Counsel to the Trump Organization. I performed a dual role in evaluating the proposal and provided both legal and business advice. I primarily communicated with the Moscow-based development company, I.C. Expert Investment Company ("Expert Investment"), through a U.S. citizen third-party intermediary, Mr. Felix Sater.

Mr. Sater was formerly an executive at a company called Bayrock Group and was involved in the deal for the Trump SoHo New York Hotel, which broke ground in 2007. Mr. Sater claimed to have appropriate relationships within the business community in Russia in order to obtain the real estate, financing, government permits, and other items necessary for such a development. The Trump Organization did not employ Mr. Sater in connection with the Trump Tower Moscow proposal, nor did the Trump Organization compensate Mr. Sater for his involvement in the proposal. Mr. Sater acted as a deal broker and would have been compensated by the licensee if the proposal had been successful. I have known Mr. Sater for several decades and I routinely

handled communications with him regarding the proposal. Mr. Sater, on occasion, made claims about aspects of the proposal, as well as his ability to bring the proposal to fruition. Over the course of my business dealings with Mr. Sater, he has sometimes used colorful language and has been prone to "salesmanship." As a result, I did not feel that it was necessary to routinely apprise others within the Trump Organization of communications that Mr. Sater sent only to me. Mr. Sater constantly asked me to travel to Moscow as part of his efforts to push forward the discussion of the proposal. I ultimately determined that the proposal was not feasible and never agreed to make a trip to Russia. Consequently, I did not travel to Russia for this proposal (nor did any other representative of the Trump Organization to the best of my knowledge) and I have never traveled to Russia. Despite overtures by Mr. Sater, I never considered asking Mr. Trump to travel to Russia in connection with this proposal. I told Mr. Sater that Mr. Trump would not travel to Russia unless there was a definitive agreement in place. To the best of my knowledge, Mr. Trump was never in contact with anyone about this proposal other than me on three occasions, including signing a non-binding letter of intent in 2015.

On or around October 28, 2015, Trump Acquisition, LLC executed a non-binding letter of intent ("LOI") with Expert Investment, memorializing the parties' "intention to negotiate for and attempt to enter into a mutually acceptable agreement covering all aspects of the transaction." The parties expressly agreed that, "unless and until a License Agreement between the Parties has been executed and delivered, . . . no party shall be under any legal obligation of any kind whatsoever to consummate a transaction hereby by virtue of this LOI." Following execution of the non-binding LOI, we began more detailed work and analysis regarding various aspects of the proposal. For example, we solicited building designs from different architects and engaged in preliminary discussions regarding potential financing for the proposal. In mid-January 2016, Mr. Sater suggested that I send an email to Mr. Dmitry Peskov, the Press Secretary for the President of Russia, since the proposal would require approvals within the Russian government that had not been issued. Those permissions were never provided. I decided to abandon the proposal less than two weeks later for business reasons and do not recall any response to my email, nor any other contacts by me with Mr. Peskov or other Russian government officials about the proposal. The proposal never advanced beyond the non-binding LOI. I did not ask or brief Mr. Trump, or any of his family, before I made the decision to terminate further work on the proposal.

The Trump Tower Moscow proposal was not related in any way to Mr. Trump's presidential campaign. The decision to pursue the proposal initially, and later to abandon it, was unrelated to the Donald J. Trump for President Campaign. Both I and the Trump Organization were evaluating this proposal and many others from solely a business standpoint, and rejected going forward on that basis.

Chairman Schiff Statement on House Intelligence Committee Investigation

Washington, DC – Today, Rep. Adam Schiff (D-CA), the Chairman of the House Permanent Select Committee on Intelligence, released the following statement following the Committee's organizational meeting:

"Consistent with its jurisdiction, investigative responsibilities, and building on substantial work undertaken during the last Congress, the House Permanent Select Committee on Intelligence ("Committee") will conduct a rigorous investigation into efforts by Russia and other foreign entities to influence the U.S. political process during and since the 2016 U.S. election. In addition, the Committee will investigate the counterintelligence threat arising from any links or coordination between U.S. persons and the Russian government and/or other foreign entities, including any financial or other leverage such foreign actors may possess.

"In the more than two years since the Intelligence Community released its assessment of Russia's malign influence operation targeting the 2016 U.S. elections, much has been learned about the scope and scale of Russia's attack on our democracy, including how covert and overt Russian activities intersected with individuals associated with Donald Trump's presidential campaign, transition, administration, and business interests, including the Trump Organization. It is now known that, from late 2015 through early 2017, individuals close to Donald Trump engaged in a significant number of contacts with an array of individuals connected to, or working on behalf of, the Russian government, and that several of these contacts involved efforts to acquire and disseminate damaging information about Hillary Clinton and her campaign, or related to Russia's desired relief from U.S. sanctions.

"While Special Counsel Robert Mueller continues his investigation into whether there were "any links and/or coordination between the Russian government and individuals associated with the [Trump] campaign," and whether any crimes were committed in connection with, or arising from, that investigation, the Committee must fulfill its responsibility to provide the American people with a comprehensive accounting of what happened, and what the United States must do to protect itself from future interference and malign influence operations.

"During the prior Congress, the Committee began to pursue credible reports of money laundering and financial compromise related to the business interests of President Trump, his family, and his

associates. The President's actions and posture towards Russia during the campaign, transition, and administration have only heightened fears of foreign financial or other leverage over President Trump and underscore the need to determine whether he or those in his Administration have acted in service of foreign interests since taking office.

"Unfortunately, these and numerous other avenues of inquiry were not completed during the last Congress. Now, in the 116th Congress, the Committee's investigation will focus principally on five interconnected lines of inquiry, beginning with these incomplete or unexamined investigative threads:

(1) The scope and scale of the Russian government's operations to influence the U.S. political process, and the U.S. government's response, during and since the 2016 election;

(2) The extent of any links and/or coordination between the Russian government, or related foreign actors, and individuals associated with Donald Trump's campaign, transition, administration, or business interests, in furtherance of the Russian government's interests;

(3) Whether any foreign actor has sought to compromise or holds leverage, financial or otherwise, over Donald Trump, his family, his business, or his associates;

(4) Whether President Trump, his family, or his associates are or were at any time at heightened risk of, or vulnerable to, foreign exploitation, inducement, manipulation, pressure, or coercion, or have sought to influence U.S. government policy in service of foreign interests; and

(5) Whether any actors – foreign or domestic – sought or are seeking to impede, obstruct, and/or mislead authorized investigations into these matters, including those in the Congress.

"The Committee may pursue additional lines of inquiry regarding matters that arise from the investigation, and it intends to cooperate with other congressional committees, as needed, on matters of overlapping interest. The Committee also plans to develop legislation and policy reforms to ensure the U.S. government is better positioned to counter future efforts to undermine our political process and national security.

"As its first act, the Committee has voted to release to the Department of Justice and its components, including the Special Counsel's Office, transcripts of testimony taken before the Committee during the 115th Congress, with no restrictions on their use.

"The Committee also plans to release to the public all investigation transcripts, as it is committed to providing the American public with greater transparency and insight into Russia's operations and the U.S. government's response. To protect ongoing investigative interests and information that remains classified, the Committee will release transcripts in a manner and according to a timetable that allows continued pursuit of important leads and testimony, while ensuring that the

American people have faith in the process and can assess for themselves the evidence that has been uncovered, while legitimate national security interests continue to be protected.

"As Chairman of the Committee, I am committed to leading a thorough and impartial investigation that will follow the facts, and I hope that our Minority counterparts will join us in that effort. Congress has a duty to expose foreign interference, hold Russia to account, ensure that U.S. officials – including the President – are serving the national interest and, if not, are held accountable."

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April 5, 2019

VIA EMAIL AND U.S. MAIL

The Hon. Adam B. Schiff
The Hon. Devin Nunes
c/o Nicholas A. Mitchell
c/o Daniel Goldman
House Permanent Select Committee on Intelligence
HVC-304, The Capitol
Washington, D.C. 20515

Re: Congressional Request for Documents and Interview Dated March 14, 2019

Dear Representatives Schiff and Nunes:

We write in response to the Committee's requests for documents and interviews sent on March 14, 2019 to our respective clients the lawyers who represent President Donald J. Trump, Ivanka Trump, Donald J. Trump Jr., Jared Kushner, and The Trump Organization. Although the Committee has important responsibilities over this country's intelligence agencies, we are at a loss to see how that charge justifies your sweeping and unprecedented requests to our clients. As we explain below, the information sought by the Committee appears to be far afield from the any proper legislative purpose or the Committee's limited jurisdiction. Longstanding Supreme Court and congressional precedents also confirm that this Committee is not empowered to usurp investigatory powers reserved to the executive branch. Absent a sufficient justification for these requests, our clients cannot agree to provide the requested documents or submit to an interview. That is particularly true since your requests plainly target information that would fall within the attorney-client and work-product privileges. Our clients are longstanding and reputable members of the bar subject to rules of professional conduct, and they have obligations to comply with the duties they owe their respective clients.

I. The Supreme Court has long recognized that Congress's power to investigate is subject to important limits.

For more than a century, the Supreme Court has recognized that Congress does not have a general, free-floating power to conduct investigations. *Watkins v. United States*, 354 U.S. 178, 187 (1957); *Kilbourn v. Thompson*, 103 U.S. 168, 190 (1880). The Constitution does not contain an "Investigations Clause"; it instead grants Congress limited legislative powers and authorizes congressional investigations only as "an adjunct" to those powers. *Watkins*, 354 U.S. at 197. A congressional inquiry is thus unconstitutional unless it has a "valid legislative purpose." *Quinn v. United States*, 349 U.S. 155, 161 (1955).

Congress lacks a legitimate legislative purpose if it uses investigations "to expose for the sake of exposure." *Watkins*, 354 U.S. at 200. The Constitution does not tolerate the "ruthless exposure of private lives" by Congress without a "clear determination … that a

particular inquiry is justified by a specific legislative need." *Id.* at 205. The Framers were particularly worried about abuses by the House of Representatives. Because its members hold such "short term of office," the House is more likely to use investigations as a bludgeon to appease angry factions. *Kilbourn*, 103 U.S. at 192. That is why House investigations, the Supreme Court has warned, must be "watched with vigilance" and given "the most careful scrutiny." *Id.*

Congress also lacks a legitimate legislative purpose if it uses investigations to effectively exercise "any of the powers of law enforcement." *Quinn*, 349 U.S. at 161. "Congress is not a law enforcement or trial agency," and it oversteps the separation of powers when it tries to act like one. *Watkins*, 354 U.S. at 187. "Investigations conducted solely for the personal aggrandizement of the investigators," the Supreme Court has held, "are indefensible." *Id*.

Even armed with a legitimate legislative purpose, congressional inquiries are invalid if they exceed the requesting committee's jurisdiction. *United States v. Rumely*, 345 U.S. 41, 44 (1953); *United States v. Patterson*, 206 F.2d 433, 434 (D.C. Cir. 1953). Congress must "spell out" the committee's jurisdiction ahead of time in the "authorizing resolution." *Watkins*, 354 U.S. at 201. And the committee "must conform strictly to the resolution." *Exxon Corp. v. FTC*, 589 F.2d 582, 592 (D.C. Cir. 1978). When an investigation is "novel" or "expansive," courts will construe the committee's jurisdiction "narrowly." *Tobin v. United States*, 306 F.2d 270, 275 (D.C. Cir. 1962).

At all times, individual requests must be "pertinent" to the committee's jurisdiction and the particular investigation at issue. *Bergman v. Senate Special Comm. on Aging*, 389 F. Supp. 1127, 1130 (S.D.N.Y. 1975); *e.g.*, *DeGregory v. Att'y Gen. of N.H.*, 383 U.S. 825, 828-29 (1966) (holding that a legislative investigation was invalid given "the staleness of both the basis for the investigation and its subject matter"). As the Supreme Court has explained, a witness appearing before Congress "is entitled to have knowledge of the subject to which the interrogation is deemed pertinent" with "the same degree of explicitness and clarity that the Due Process Clause requires in the expression of any element of a criminal offense." *Watkins*, 354 U.S. at 206. This pertinency requirement is "jurisdictional." *Id.*

II. This Committee appears to lack jurisdiction to propound these requests.

The requests that this Committee made on March 14 far exceed its jurisdiction and authority. The Committee was established on July 14, 1977 by House Resolution 658.[1] Its mandate is "to oversee and make continuing studies of the intelligence and intelligence-related activities and programs of the United States Government, and to submit to the House appropriate proposals for legislation and report to the House concerning such intelligence and intelligence-related activities and programs." To carry out this purpose, the Committee's

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Notably, House Resolution 658 has been removed from the Committee's website. The only reference to the Resolution or to the Committee's history and jurisdiction are on the Minority page. *See* bit.ly/2FLpGLJ.

jurisdiction is limited to "proposed legislation, messages, petitions, memorials, and other matters" relating to the Central Intelligence Agency, the Director of National Intelligence, the National Intelligence Program, and the federal government's other "intelligence and intelligence-related activities." House Rule X, cl. 11(b)(1)(A)-(D).

The Committee's requests do not stay within these bounds. Open-ended inquiries into the process by which witnesses came to testify before the Committee, source documentation concerning Justice Department inquiries, and "pardon-related" conversations do not fall within the Committee's jurisdiction over intelligence agencies. *See* House Rule X, cl. 11(j)(1) (definition of "intelligence and intelligence-related activities"). Nor has the Committee attempted to explain how the requests are pertinent to this jurisdiction or any live investigation. The Committee's requests also infringe on the government's law-enforcement functions, which are reserved for the executive and judicial branches. *See Icardi v. United States*, 140 F. Supp. 383, 388 (D.D.C. 1956) (restricting prosecution of a witness who was called before Congress merely to provide the predicate for a law-enforcement action because "if the committee is not pursuing a bona fide legislative purpose when it secures the testimony of any witness, it is not acting as a 'competent tribunal', even though that very testimony be relevant to a matter which could be the subject of a valid legislative investigation"). To the extent the Committee believes there was an effort to interfere with its inquiry into various Russia-related matters, the proper course is to refer that matter to the appropriate law-enforcement agency.

In sum, the March 14 requests appear to exceed this Committee's limited jurisdiction. They do not appear calculated to advance any proper legislative purpose beyond a law-enforcement investigation. We thus ask the Committee to explain how the enumerated matters of inquiry fall within its legislative sphere in light of House Resolution 658 and the legal principles set forth above.

III. The requests raise additional concerns—including the attorney-client and work-product privileges—that cast further doubt on their propriety.

Our concerns about the purpose and jurisdiction of the Committee's requests are underscored by the fact that the requests, on their face, specifically target documents and information that (to the extent they exist) are plainly protected by attorney-client and work-product privilege. "The attorney-client privilege is the oldest of the privileges for confidential communications known to the common law." *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981) (citing 8 J. Wigmore, Evidence § 2290 (McNaughton rev. 1961)). It predates the creation of our Republic by 200 years, *Berd v. Lovelace*, 21 Eng. Rep. 33 (Ch. 1577); was considered by Justice Joseph Story to be "indispensable," *Chirac v. Reinicker*, 24 U.S. 280, 294, 6 L. Ed. 474 (1826); and has long been recognized by the Supreme Court, *e.g.*, *Hunt v. Blackburn*, 128 U.S. 464, 470 (1888). The attorney-client privilege "encourage[s] full and frank communication between attorneys and their clients" and "recognizes that sound legal advice or advocacy serves public ends and that such advice or advocacy depends upon the lawyer's being fully informed by the client." *Upjohn*, 449 U.S. at 389. The privilege applies here because our clients engaged in confidential communications with their clients in rendering legal advice and none of their clients have waived the privilege.

The work-product doctrine expands on the attorney-client privilege and protects attorney work product prepared in anticipation of litigation.[2] *Hickman v. Taylor*, 329 U.S. 495, 510-11 (1947); *see also* Fed. R. Civ. P. 26(b)(3)(A) (generally prohibiting discovery of "documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative"). It is "essential that a lawyer work with a certain degree of privacy, free from unnecessary intrusion," according to the Supreme Court, and discovery into those areas would poorly serve "the interests of the clients and the cause of justice." *Hickman*, 329 U.S. at 510-11. The work-product privilege, like the attorney-client privilege, has thus long been recognized and protected by the federal courts.[3] And it is professional misconduct for lawyers to violate these duties of confidentiality to their clients. ABA Model Rules of Professional Conduct §§ 1.6, 8.4. As attorneys, our clients owe ongoing ethical duties to preserve their client's confidences.

Finally, we note that, even if the Committee were inclined to ignore the constraints on its jurisdiction and seek plainly privileged information, this is a particularly weak case to take those unprecedented steps. The Committee's requests appear to stem from recent testimony before the Committee from a source of questionable reliability.[4] Moreover, to the extent your requests can be read to request information that is in the hands of other offices and agencies that, unlike this Committee, *are* responsible for investigating potential criminal matters, that information should be sought from those entities. Those entities are best positioned to determine whether or how the requested material should be shared with Congress.[5]

In light of these serious concerns, we ask the Committee to provide a jurisdictional basis for its requests and to reconsider any attempt to seek documents or information that were obtained or created by attorneys in the course of representing their clients or that can be obtained elsewhere.

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[2] An investigative legislative hearing is included within the definition of "in anticipation of litigation." Restatement (Third) of the Law Governing Lawyers § 87 cmt. h (2000).

[3] These privileges are not waived when parties to litigation, including those who are under investigation, have their retained separate counsel agree to work together, strategize, and share resources. *See, e.g.*, C.B. Mueller & L.C. Kirkpatrick, Evidence § 5.15, at 388 (1995); K.P. Seymour & A. Caffarone, Defending Corp. & Indiv. in Gov. Invest. § 5:5 (Dec. 2017). Parties do not need to demonstrate identical interests in order to invoke the joint defense privilege, *e.g.*, *Haines v. Liggett Group, Inc.*, 975 F.2d 81 (3d Cir. 1992), and once a joint defense arrangement is in place, any waiver of privilege requires the consent of all co-parties, *e.g.*, *John Morrell & Co. v. Local Union 304A*, 913 F.2d 544, 556 (8th Cir. 1990).

[4] To the extent the Committee's requests are premised on statements Mr. Cohen recently made to Congress, it should be noted that Mr. Cohen's attorney almost immediately was compelled to tell the press that it was *his* client who drafted the portion of his written statement that formed the basis of his guilty plea for lying to Congress, and not anyone else.

[5] Some of your requests also appear to call for documents that may reflect the communications or deliberative process of clients within the executive branch, and thus raise additional concerns.

Sincerely,

Carol Elder Bruce

Counsel for Abbe Lowell

Stefan Passantino

Counsel for Alan Futerfas and Alan Garten

Patrick Strawbridge

Jane Serene Raskin

Counsel for Jay Sekulow

ADAM B. SCHIFF, CALIFORNIA
CHAIRMAN

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ONE HUNDRED SIXTEENTH CONGRESS

DEVIN NUNES, CALIFORNIA
RANKING MEMBER

ALLEN SOUZA, MINORITY STAFF DIRECTOR

Permanent Select Committee on Intelligence
U.S. House of Representatives

May 3, 2019

VIA ELECTRONIC AND U.S. MAIL

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Counsel for Alan Futerfas & Alan Garten

Dear Counsel:

I write in response to your joint letter dated April 5, 2019 opposing the Committee's March 14, 2019 request that your clients—attorneys Abbe Lowell, Alan Futerfas, Alan Garten, and Jay Sekulow—preserve and produce documents and participate in voluntary, transcribed interviews before the Committee. These requests are made in connection with the Committee's ongoing investigation of foreign influence in the U.S. political process during and since the 2016 election, including whether any actors—foreign or domestic—sought or are seeking to impede, obstruct, and/or mislead authorized investigations into these matters, including those by Congress. For the following reasons, we believe your objections to the March 14 requests are without merit. Accordingly, the Committee requests that your clients produce the requested documents and contact the Committee staff to schedule dates for voluntary interviews no later than **May 10, 2019 at 5:00 p.m.**

I. The Committee's March 14 Requests

Your April 5 letter questions the factual basis for the Committee's March 14 requests. As you are aware, the Committee's requests relate to efforts to obstruct investigations of foreign influence in the U.S. political process during and since the 2016 election, including the Committee's own investigation. On May 9, 2017, the Committee sent Michael Cohen, the President's former personal attorney and Trump Organization executive, a voluntary request for documents and testimony with a return date of May 22, 2017. On May 25, 2017, after Cohen failed to respond to the Committee's May 9 request, the Committee issued two subpoenas to compel Cohen's cooperation with the Committee: one subpoena commanded Cohen to testify before the Committee and produce, in his personal capacity, documents requested by the Committee; the other subpoena compelled *Michael Cohen & Associates P.C.* to produce documents requested by the Committee. On August 28, 2017, in conjunction with a document production in response to the subpoenas, Cohen submitted a two-page statement about the Trump Tower Moscow project (the "Statement"), which contained several materially false statements and omissions. On November 29, 2018, Cohen pled guilty in the Southern District of New York to causing false statements to be made to this Committee. *See United States v. Michael Cohen*, No. 18 Cr. 850 (WHP) (S.D.N.Y. Nov. 29, 2018).

In our March 14 letter, the Committee requested documents and materials relating to: (1) the drafting of the Statement; (2) false statements that Cohen made to Congress in relation to the Statement, to which Cohen pleaded guilty; (3) the Joint Defense Agreement ("JDA") involving Cohen, the President, and others involved in the Russia investigation; (4) responses by Cohen and others, including the Trump Organization, to document requests made by the Committee and other investigators; (5) discussions of possible pardons for Cohen and other witnesses; (6) testimony of other witnesses whose testimony was requested by the Committee; (7) search warrants executed at Cohen's premises; (8) criminal prosecutions of Cohen; and (9) the June 9, 2016 meeting at Trump Tower in Manhattan and public statements made by the President and Donald Trump Jr. regarding the same on and after July 8, 2017.

Your April 5 letter speculates that "[t]he Committee's requests appear to stem from recent testimony before the Committee from a source of questionable reliability," apparently referring to Cohen. The Special Counsel, however, who reportedly spent 70 hours debriefing Cohen, found him to be credible. As set forth in the Special Counsel's *Report on the Investigation Into Russian Interference in the 2016 Presidential Election* transmitted to Congress on April 18, 2019 (the "Report"), the Special Counsel determined that Cohen's testimony was "consistent with and corroborated by other information obtained in the course of the Office's investigation." (Vol. II, p. 134, n. 909); *see also* Sentencing Memorandum, Office of Special Counsel, *United States v. Michael Cohen*, No. 18 Cr. 850 (WHP) (filed Dec. 7, 2018), at 2 ("The information [Cohen] has provided has been credible and consistent with other evidence obtained in the SCO's ongoing investigation.").

Following his guilty plea, Cohen testified before the House Committee on Oversight and Reform on February 27, 2019, and before this Committee in closed sessions on February 28, 2019 and March 6, 2019. Based on this testimony and corroborating evidence, the Committee had a good faith basis to believe that other members of the JDA and their counsel—*i.e.*, your

clients—may have engaged in efforts intended to obstruct authorized investigations. Among other things, it appears that your clients may have reviewed, shaped, and edited the false Statement that Cohen submitted to the Committee, including causing the omission of material facts. In addition, certain of your clients may have engaged in discussions about potential pardons in an effort to deter one or more witnesses from cooperating with authorized investigations.

Since then, the Special Counsel has publicly released the Report. The Report sets forth additional details concerning Cohen's drafting and submission of the false Statement to the Committee, and your clients' role in the same. The Report discusses how, after Cohen received requests from the Committee in May 2017 to provide testimony and documents, he "entered into a joint defense agreement (JDA) with the President and other individuals who were part of the Russian investigation." (Vol. II, p. 139). According to the Report, during the period leading up to Cohen's congressional testimony, "Cohen frequently spoke with the President's personal counsel," Jay Sekulow, during which Sekulow repeatedly instructed Cohen to "stay[] on message," which Cohen understood to mean not to contradict the President's false public denials of any personal, financial, or business connections to Russia. (*Id.* at 139-40).[1]

In August 2017, Cohen began drafting the Statement about Trump Tower Moscow and the President's dealings with Russia. (*See id.* at 140 & n. 965). The Report explains how the Statement was "circulated in advance to, and edited by, members of the JDA." (*Id.* at 141).[2] During the editing process, a relevant (and accurate) sentence stating, "The building project [in Moscow] led me to make limited contacts with Russian government officials," was deleted from the final draft based upon an apparent "decision of the JDA." (*Id.*). Following review and editing by members of the JDA, the final version of the Statement, which "contained several false statements about the project," was submitted to the Committee. (*Id.* at 140).

Sekulow and Cohen also reportedly discussed "keeping Trump out of the narrative" concerning Cohen's earlier "attempt to set up a meeting between Trump and Putin" in September 2015 and "Trump's role in it." (*Id.* at 142). Although such information was plainly pertinent to the Committee's investigation, Sekulow "told Cohen the story was *not* relevant and should *not* be included in his statement to Congress." (*Id.*) (emphasis added). In the final version, the Statement omitted this highly relevant information. In addition, Cohen advised Sekulow that there was "more detail on Trump Tower Moscow that was not in the [S]tatement," including "more communications with Russia" and "more communications with candidate Trump" than the Statement contained. (*Id.* at 143). Yet again, Sekulow advised Cohen *not* "to elaborate or

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1 The Report avers that Cohen waived any privilege relating to his conversations with Sekulow. (Vol. II, p. 139, n. 958).

2 The Report notes that Cohen also testified before Congress that Sekulow reviewed and edited the Statement. (Vol. II, p. 141, n. 971 (citing *Hearings on Issues Related to Trump Organization Before the House Oversight and Reform Committee*, 116th Cong. (Feb. 27, 2019) (CQ Cong. Tr. 24-25)). The Report further notes that Cohen's account is corroborated by phone records that "reflect that Cohen spoke with the President's personal counsel almost daily," including "numerous" phone calls on the day before Cohen submitted the false Statement to the Committee. (*Id.* at 142-43).

include those details" in the Statement submitted to Congress, but instead to "stay on message" and "not contradict the President." (*Id.*).

Put simply, in response to the Committee's subpoena, Cohen submitted a Statement—coordinated, reviewed, shaped, and edited by your clients as the attorneys for the other JDA members—that contained material false statements and omissions of fact. These false statements and material omissions were intended to have—and, in fact, had—the effect of obstructing and impeding the Committee's investigation.

Based upon information in the public record alone, including the Report and Cohen's testimony before the Committee on Oversight and Reform, there is more than a sufficient factual predicate for the Committee's March 14 requests, notwithstanding your contention to the contrary. The Committee, moreover, is in possession of additional testimony, documents, and other corroborating information obtained in Executive Session that further implicates your clients and raises credible and serious questions about their involvement in a scheme to mislead and obstruct authorized investigations, including that of the Committee.

II. A Blanket Assertion of Privilege Is Improper

Prior to turning to the jurisdictional arguments raised in your April 5 letter, we briefly address your claim of privilege. Your April 5 letter asserts that the March 14 requests "target documents and information that (to the extent they exist) are plainly protected by attorney-client and work-product privilege." As an initial matter, your blanket assertion of privilege is improper. As stated in our March 14 letter, the Committee does not believe that any privilege would preclude production of the requested documents. In any event, your bare assertion of privilege without any particularized discussion of specific documents or communications is woefully inadequate to meet your burden of establishing the elements necessary to support a valid claim of privilege. To the extent you have a good faith basis to believe that any particular document, or portion of a document, contains information subject to a valid claim of privilege, the proper course is to redact or withhold such documents and provide a detailed privilege log, as the Committee requested.

Moreover, the Committee believes that neither the attorney-client privilege nor the work-product privilege provides a valid basis to withhold the requested documents and testimony. *First*, common-law, court-made privileges, such as the attorney-client privilege, are not constitutional in nature and, therefore, cannot limit Congress's lawful Article I investigative powers. While the Committee—in its discretion—may recognize application of the attorney-client privilege in appropriate circumstances, it has not elected to do so here. *Second*, even if the attorney-client privilege or work-product privilege could apply in the context of congressional investigations, both would still be subject to recognized exceptions and limitations, including, as relevant here, the crime-fraud exception. *See In re Grand Jury*, 475 F.3d 1299, 1305 (D.C. Cir. 2007) ("Attorney-client communications are not privileged if they 'are made in furtherance of a crime, fraud, or other misconduct.'" (quoting *In re Sealed Case*, 754 F.2d 395, 399 (D.C. Cir. 1985))). Given that—as outlined above—there is, at a minimum, "prima facie" evidence that the crime-fraud exception would apply to the documents and communications at issue, your claim of

privilege in these circumstances does not withstand scrutiny. *Id.* (internal quotation marks omitted)

It also bears noting that, in light of the limitations that the Special Counsel believed the attorney-client privilege placed on his criminal investigation of the obstruction scheme, the Committee's own investigation of that conduct is all the more vital. Even though Cohen waived any privilege of his own, the Special Counsel was wary of infringing upon any privilege held by other members of the JDA and their counsel. As a result, "most of what Cohen told [the Special Counsel] about his conversations with the President's personal counsel concerned what Cohen had communicated to the President's personal counsel, *and not what was said in response*." (Vol. II., p. 139, n. 958) (emphasis added). Furthermore, the Special Counsel's investigation was impeded by the decision of the President's personal counsel not "to provide information to [the Special Counsel] about his conversations with Cohen related to Cohen's congressional testimony about Trump Tower Moscow." (*Id.*). As such, it is particularly important for the Committee to conduct a thorough investigation of efforts by the JDA members and their counsel to obstruct the Committee's investigation.

III. The Investigation Is Within the Committee's Jurisdiction and Has A Legitimate Legislative Purpose

Turning to the jurisdictional claims, your April 5 letter contends that the Committee's March 14 requests "far exceed its jurisdiction and authority" and lack a "legitimate legislative purpose." This is a curious argument in light of an unambiguous court decision just last year that reached the precisely opposite conclusion: that this Committee's investigation during the last Congress into Russian active measures campaign targeting the 2016 election was a "legitimate legislative investigation." *Bean LLC v. John Doe Bank*, 291 F. Supp. 3d 34, 43 (D.D.C. 2018); *see also* Press Statement, U.S. House of Representatives Permanent Select Comm. on Intelligence, *Intelligence Committee Chairman, Ranking Member Establish Parameters for Russia Investigation*, dated March 1, 2017).

"The power of the Congress to conduct investigations is inherent in the legislative process. That power is broad." *Watkins v. United States*, 354 U.S. 178, 187 (1957); *see also Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 504 n.15 (1975) ("[T]he scope of [Congress's] power of inquiry … is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution.") (citation and quotation marks omitted); *see, e.g.*, *McGrain v. Daugherty*, 273 U.S. 135, 177 (1927) (upholding Congress's far-reaching power to investigate "the administration of the Department of Justice—whether its functions were being properly discharged or were being neglected or misdirected"). "The power of inquiry has been employed by Congress throughout our history, over the whole range of the national interests concerning which Congress might legislate or decide upon due investigation not to legislate[.]" *Barenblatt v. United States*, 360 U.S. 109, 111 (1959). In considering the scope of the Congressional investigative power, the Supreme Court has required only a general grant of authority "sufficient to show that the investigation upon which the [Committee] had embarked concerned a subject on which 'legislation *could be had*.'" *Eastland*, 421 U.S. at 506 (quoting *McGrain*, 273 U.S. at 177) (emphasis added).

Here, the Committee's investigation of ongoing foreign influence in the U.S. political process is directly related to, and in furtherance of, its legislative authority in the areas of intelligence and intelligence-related activities. HPSCI is a standing committee of the United States House of Representatives charged broadly with oversight of the intelligence community and all intelligence-related activities and programs of the United States Government. *See* H.R. Res. 658, 95th Cong. (1977). The House has delegated to the Committee its investigatory power over all such intelligence-related activities and matters. Thus, the House Rules provide that the Committee "shall review and study on a continuing basis laws, programs, and activities of the intelligence community and shall review and study on an exclusive basis the sources and methods of entities" that comprise the intelligence community. House Rule X, cl. 3(m), 116th Cong. (2019). The Committee has broad jurisdiction over all "proposed legislation . . . and other matters relating to," among other things, "the National Intelligence Program"[3] and all "[i]ntelligence and intelligence related activities[4] of all other departments and agencies of the Government." House Rule X, cl. 11(b)(1); *see also Bean LLC*, 291 F. Supp. 3d at 42 ("[T]he Committee's responsibilities include oversight of 'the activities of the intelligence community.'" (citing House Rule X, cl. 3(m) & cl. 11(b)(1))).

The Committee's investigation falls squarely within this broad jurisdiction to inquire into any "intelligence and intelligence-related activities," House Rule X, cl. 11(b)(1), and relates to matters "on which legislation could be had," *Eastland*, 421 U.S. at 508. Specifically, as set forth in the Committee's statement outlining the parameters of its duly authorized investigation, dated February 6, 2019 (a copy of which was attached to the March 14 letter), the Committee is investigating the following intelligence-related activities, the Executive Branch's handling of the same, and assessing whether legislation is required to address these threats to national security: (1) "[t]he scope and scale of the Russian government's operations to influence the U.S. political process, and the U.S. government's response, during and since the 2016 election"; (2) "[t]he extent of any links and/or coordination between the Russian government, or related foreign actors, and individuals associated with Donald Trump's campaign, transition, administration, or business interests, in furtherance of the Russian government's interests"; (3) "[w]hether any

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[3] The National Security Act of 1947 defines "National Intelligence Program," in pertinent part, as "all programs, projects, and activities of the intelligence community, as well as any other programs of the intelligence community designated jointly by the Director of National Intelligence and the head of a United States department or agency or by the President." 50 U.S.C. § 3003(6).

[4] The House Rules define "intelligence and intelligence-related activities" to include, among other things: (a) "collection, analysis, production, dissemination, or use of information that relates to a foreign country, or a government, political group, party, military force, movement, or other association in a foreign country, and that relates to the defense, foreign policy, national security, or related policies of the United States and other activity in support of the collection, analysis, production, dissemination, or use of such information"; and (b) "the collection, analysis, production, dissemination, or use of information *about activities of persons within the United States, its territories and possessions, or nationals of the United States abroad whose political and related activities pose, or may be considered by a department, agency, bureau, office, division, instrumentality, or employee of the United States to pose, a threat to the internal security of the United States*." House Rule X, cl. 11(j)(1)(A), (D) (emphasis added).

foreign actor has sought to compromise or holds leverage, financial or otherwise, over Donald Trump, his family, his business, or his associates"; (4) "[w]hether President Trump, his family, or his associates are or were at any time at heightened risk of, or vulnerable to, foreign exploitation, inducement, manipulation, pressure, or coercion, or have sought to influence U.S. government policy in service of foreign interests"; and (5) "[w]hether any actors—foreign or domestic—sought or are seeking to impede, obstruct, and/or mislead authorized investigations into these matters, including those in the Congress"—which could itself constitute evidence of foreign leverage, compromise, or coercion of U.S. government officials. Press Release, U.S. House of Representatives Permanent Select Comm. on Intelligence, *Chairman Schiff Statement on House Intelligence Committee Investigation* (February 6, 2019).

Moreover, the Committee's investigation during the 116th Congress follows on the Committee's investigation during the 115th Congress, in which the Committee undertook the House of Representatives' sole authorized investigation of Russia's actions and links to U.S. political campaigns and persons. That the Committee has jurisdiction to conduct the instant investigation is not seriously debatable in light of *Bean LLC*. In *Bean*, the U.S. District Court for the District of Columbia upheld the Committee's issuance of a subpoena for bank records in connection with the Committee's investigation during the 115th Congress and specifically found that the Committee's investigation was a "legitimate legislative investigation." *Bean LLC*, 291 F. Supp. 3d at 43. In that case, Fusion GPS ("Fusion"), the research firm that was hired to conduct political opposition research on then-candidate Trump, raised the same objections to the Committee subpoena for their bank records as in your April 5 letter: that the Committee's subpoena was "overly broad, unauthorized, and request[ed] records of Fusion's business transactions that [were] irrelevant to the Committee's investigative inquiry." *Id.* The court swiftly and unambiguously rejected these arguments. The court held that the Committee's investigation, "which implicates the intelligence community's response to Russian active measures directed against the United States," was undoubtedly a "legitimate legislative investigation" and enforced the subpoena. *Id.* at 43. The same result obtains here.

Accordingly, your claims that the Committee's investigation is beyond its jurisdiction or lacks a legitimate legislative purpose are baseless and, therefore, provide no reason to withhold the requested documents or testimony.

IV. The March 14 Requests Are Highly Pertinent to the Committee's Investigation

Your April 5 letter also questions whether "the [March 14] requests are pertinent to [the Committee's] jurisdiction or any live investigation." More specifically, you assert that the Committee's requests fall outside the "bounds" of the Committee's jurisdiction, are not "pertinent" to the Committee's investigation, and purportedly "infringe on the government's law-enforcement functions." This argument—which some of you have raised in other contexts in an effort to stonewall the Congress—is unavailing.

To start, "it goes without saying that the scope of the Committee's authority was for the House, not a witness, to determine." *Barenblatt*, 360 U.S. at 124; *see also Bean LLC*, 291 F. Supp. 3d at 45 ("[I]t is manifestly impracticable to leave to the subject of the investigation alone the determination of what information may or may not be probative of the matters being

investigated." (internal quotation marks and citation omitted)). Your April 5 letter suggests that the Committee's requests "do not appear calculated to advance any proper legislative purpose beyond a law-enforcement investigation." While the Committee, of course, is not a law enforcement body, its power to investigate is no less broad. Congress's long-established authority to compel the production of evidence, like that of grand juries, is derived from the Constitution itself, and "is as penetrating and far-reaching as the potential power to enact and appropriate ...." *Eastland*, 421 U.S. at 504 n.15 (citation and quotation marks omitted). Moreover, the Supreme Court has made clear that courts "determining the legitimacy of a congressional act"—including investigative document requests such as this one—"do not look to the motives alleged to have prompted it." *Eastland*, 421 U.S. at 508; *see, e.g.*, *Bean LLC*, 291 F. Supp. 3d at 44 (holding that the court "lack[ed] the authority to restrict the scope of the Committee's investigation" based upon a claim that the subpoenaed records were "irrelevant" and stating that a court "*may not* [] engage in a line-by-line review of the Committee's requests" (emphasis added)).[5]

In any event, the March 14 requests easily surmount the low bar for pertinence set by the Supreme Court because you have not shown—and cannot show—that they are "plainly incompetent or irrelevant" to the Committee's authorized investigation. *McPhaul v. United States*, 364 U.S. 372, 381 (1960); *accord Bean* LLC, 291 F. Supp. 3d at 44 (courts "may only inquire as to whether the documents sought by the subpoena are not plainly incompetent or irrelevant to any lawful purpose of the Committee in the discharge of its duties") (internal quotation marks and brackets omitted). All of the March 14 requests relate directly to potential or actual obstruction of the Committee's authorized investigative lines of inquiry outlined above. In particular, they are directed at efforts to "impede, obstruct, and/or mislead" the Committee's investigation and related investigations, including through false and misleading testimony, the submission of false and misleading written statements, and/or the willful withholding from the Committee of requested information and materials. Because the Committee's March 14 requests "could reasonably produce information relevant to the general subject of the Committee's inquiry," you simply cannot meet your hefty "burden of showing that the request[s] [are] unreasonable." *Bean LLC*, 291 F. Supp. 3d at 44.

To the extent your April 5 letter suggests that the Committee lacks the authority to investigate obstruction of its own investigation, this argument borders on the absurd. The Committee's investigation of efforts to obstruct its own probe is firmly grounded in law and precedent. *See, e.g.*, *Morrison v. Olson*, 487 U.S. 654, 665-66 (1988) (discussing the House Judiciary Committee's investigation of possible obstruction by Justice Department officials of an earlier Congressional investigation by two House subcommittees of efforts by the EPA and Justice Department to enforce the "Superfund Law"); *Cmte. on Oversight & Gov't Reform v. Sessions*, 344 F. Supp. 3d 1, 3-7 (D.D.C. 2018) (discussing House Committee on Oversight and

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[5] Nor must there be, as the Supreme Court has held, a "predictable end result" for a Committee's request to be a "valid legislative inquiry." *Eastland*, 421 U.S. at 509. As the Court has recognized, "[t]he very nature of the investigative function—like any research—is that it takes the searchers up some 'blind alleys' and into nonproductive enterprises." *Id.*; *cf. McSurely v. McClellan*, 521 F.2d 1024, 1041 (D.C. Cir. 1975) ("There is no requirement that every piece of information gathered in [a Congressional] investigation be justified before the judiciary.").

Reform's investigation of "Operation Fast and Furious," including the "shift" in the investigation to focus on "uncovering why the [Justice] Department had provided it with incorrect information at the outset"). The authority of a Committee to investigate efforts to obstruct its own authorized investigation—like Congress's power to investigate generally—is "inherent in the legislative process." *Watkins*, 354 U.S. at 187; *see, e.g.*, *Wilkinson v. United States*, 272 F.2d 783, 787 (5th Cir. 1959) (where the House invested a committee "with pervasive authority to investigate," included in that authority was "the power to investigate activities directed to interference with the legislative processes and their functioning"). For just as Congress's inherent contempt power rests upon the "right of self-preservation," so too does a Committee's authority to investigate efforts to obstruct its own investigation. *Marshall v. Gordon*, 243 U.S. 521, 542 (1917) (observing that Congress's inherent contempt power rests upon "the right to prevent acts which, in and of themselves, inherently obstruct or prevent the discharge of legislative duty or the refusal to do that which there is an inherent legislative power to compel in order that legislative functions may be performed"); *cf. Young v. U.S. ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 793 (1987) ("[I]t is long settled that courts possess inherent authority to initiate contempt proceedings for disobedience to their orders[.]").

Nor is the authority of the Committee to investigate possible obstruction by your clients diminished in any way by the prospect that such conduct may give rise to separate criminal prosecutions. "[S]urely a congressional committee which is engaged in a legitimate legislative investigation need not grind to a halt whenever responses to its inquiries might potentially be harmful to a witness in some distinct proceeding, *Sinclair v. United States*, 279 U.S. 263, 295 (1929), or when crime or wrongdoing is disclosed, *McGrain v. Daugherty*, 273 U.S. 135, 179-80 (1927)." *Hutcheson v. United States*, 369 U.S. 599, 618 (1962). If warranted, the Committee will take the appropriate steps to refer any suspected criminal matters to the proper Executive Branch officials. But this possibility does not convert the Committee's inquiry into a law enforcement task, nor does it invalidate the legitimate legislative purpose for the Committee's requests. As such, the clear purpose of the Committee's investigation in no way infringes on the "powers of law enforcement" assigned by the Constitution to the Executive or the Judiciary. *Quinn v. United States*, 349 U.S. 155, 161 (1955).[6]

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[6] Notably, the *only* example cited in your April 5 letter of a Congressional investigation that "infringe[d] on the government's law-enforcement functions"—*United States v. Icardi*, 140 F. Supp. 383 (D.D.C. 1956)—is wholly inapposite. In *Icardi*, the defendant was charged with perjury before a special subcommittee that was investigating the disappearance and death of an American major in Italy. *Id.* at 385. Icardi had been implicated in the murder, but there was no jurisdiction to punish him since he had severed his relationship with the service. *Id.* at 387. The Chairman of the subcommittee admitted that Icardi was called only to tell his side of the story or to enable a perjury prosecution because the subcommittee already had in its possession sufficient information on which to base its report to Congress. *Id.* at 388. The district court held that providing a forum in which to lay the foundation of a perjury prosecution was not a valid legislative purpose. *Id.* Unlike in *Icardi*, the purpose of the Committee's obstruction investigation is not solely to lay the foundation for a criminal prosecution, but rather to examine whether actors are seeking to impede, obstruct, and/or mislead authorized investigations into these matters—which could itself constitute evidence of foreign leverage, compromise, or coercion. Moreover, although the *Icardi* court reaffirmed the uncontroversial principle that

In sum, the March 14 requests are pertinent to the Committee's authorized investigation. Your objections lack merit and establish no valid basis to withhold the requested documents and testimony from the Committee.

Conclusion

For the foregoing reasons, we reiterate our request that your clients produce all documents responsive to the March 14 requests and a detailed privilege log for any documents, or portions of documents, that you believe should be withheld on the basis of privilege. Instructions for creating any such privilege log are included in our March 14 letter. The Committee requests that your clients produce the requested documents, along with any privilege log, and contact the Committee staff to schedule dates for voluntary interviews no later than **May 10, 2019 at 5:00 p.m.** Failure to comply with this deadline shall be interpreted as a refusal to do so, and the Committee will proceed accordingly, including the possible issuance of compulsory process.

Please contact Daniel Goldman or Daniel Noble with the Committee's Majority Staff at 202-225-7690 if you wish to discuss further.

Sincerely,

Adam B. Schiff
Chairman

Cc: The Honorable Devin Nunes
Ranking Member

Congress's "power to investigate must not be confused with any of the powers of law enforcement," *id.* at 389 (citing *Quinn*, 349 U.S. at 161), the court acknowledged that a Congressional committee nevertheless "has the right to inquire whether there is a likelihood that a crime has been committed touching upon a field within its general jurisdiction," *id.* at 388.